

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D. C.

November 8, 1951

MEMORANDUM OF EXPLANATION AND INSTRUCTIONS:

SUBJECT: Legislation to continue existing statutory authority which would otherwise terminate upon termination of the state of war with Japan.

1. THIS REQUEST. This memorandum explains in detail the request made in this office's letter of today asking for your recommendations by November 26, 1951, as to what legislation is desirable for the continuation of existing statutory authority which would otherwise be terminated by the termination of the state of war with Japan.

Many existing governmental powers essential to the national security depend upon the existence of a state of war. As you know, the state of war with Germany has already been terminated, effective October 19, 1951 (Act of October 19, 1951, Public Law 181; termination proclaimed by the President October 24, 1951, Procl. No. 2950, 16 F.R. 10915). When the state of war with Japan is terminated, we shall no longer be in a state of war. Accordingly, legislation is needed to keep essential powers in existence after termination of the state of war.

For the purpose of this legislation it will be assumed that, unless there is further action by Congress, the termination of the state of war with Japan will terminate authority based on the existence of

- (a) a state of war, or
- (b) the limited national emergency proclaimed by the President in 1939 (Proc. No. 2352, September 8, 1939, C.F.R. Cum. Supp. for Titles 1-3, 1943, p. 114), or
- (c) the unlimited national emergency proclaimed by the President in 1941 (Proc. No. 2487, May 27, 1941, C.F.R. Cum. Supp. for Titles 1-3, 1943, p. 234),

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and that it will bring into effect all statutory provisions imposing limitations applicable

- (a) in time of peace, or
- (b) after a proclamation of peace.

(The reasons for these assumptions are explained below.) Your views are desired, within the limits set forth below, as to which specific statutory provisions conferring any such authority should be continued in force after the termination of the war with Japan, and which specific statutory provisions imposing such peacetime restrictions should not become operative upon the termination of the state of war with Japan, and precisely what words should be used in each instance in legislation for this purpose. Your views will serve as a basis for the drafting of the legislation and for the presentation of it to the Congress.

The Bureau of the Budget has been greatly aided in its work on this subject by the replies of agencies of the Government to the Bureau's inquiry of October 4, 1950, with respect to legislation dependent upon the existence of war, emergency generally, or hostilities. In addition, it will be necessary for agencies to give their present views in full, in accordance with paragraph 8 H and I below, in order to insure completeness, avoid errors, and facilitate the prompt collation of comments.

2. TIME LIMIT FOR REPLIES. The close time limit of November 26, 1951, is necessitated by the importance of having the proposed legislation ready for introduction in the first week of the next session of Congress, which begins on January 8, 1952. The preparation of the list of statutes and other material has been very time-consuming, and it is expected that the completion of the bill after receipt of agencies' replies will take the full time remaining before the opening of Congress.

3. ENCLOSURES. The following enclosures are transmitted to assist agencies in replying:

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- (a) "List of Statutes" dated November 8, 1951, prepared in this Bureau (described in paragraph 4 below).
- (b) Draft of letter to the Speaker of the House of Representatives transmitting and explaining proposed legislation (commented upon in paragraph 5 below).
- (c) Forms to be used by agencies in replying to this request (commented on in paragraph 6 below).

4. THE LIST OF STATUTES. The List of Statutes is a list of statutory provisions conferring authority which will terminate on the termination of the state of war with Japan. It has been prepared as a check list to be used by all agencies in preparing their replies to this request and as a basis for assigning specific responsibilities to named agencies in connection with each item. It lists provisions conferring currently existing authority exercisable during war, or during the "limited" emergency proclaimed by the President on September 8, 1939, or during the "unlimited" emergency proclaimed by the President on May 27, 1941. It includes also a few provisions imposing restrictions applicable only in time of peace or after proclamation of peace. It includes amendments made through 1950. It calls attention to a few court rules and executive agreements affected by termination of the state of war. Doubts as to whether a provision should be included have been resolved in favor of inclusion, so as to obtain the judgment of interested agencies. Consequently, the list may include some provisions which will finally be determined not to be within the scope of this inquiry. At the same time it is obvious from the nature of the problem that some statutes are likely to have been omitted from the list. Ascertaining these is one of the purposes of this inquiry.

Certain provisions framed in terms of war or emergency have been deliberately omitted from the list because this inquiry is concerned only with authority which will be terminated by a termination of the state of war. The classes of authority omitted for this reason include the following:

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Authority which was terminated by the President's Proclamation of December 31, 1946, proclaiming the termination of hostilities (Proc. No. 2714, C.F.R., 1946 Supp. to Titles 1-8, p. 77).

Authority which was terminated by the 1947 law which, with respect to a number of specified provisions, terminated authority dependent on World War II or on the 1939 or 1941 emergencies (Act of July 25, 1947, known as Public Law 239, 61 Stat. 449, ch. 327).

Authority which is stated to be exercisable during a state of emergency generally or during the particular state of emergency proclaimed by the President in 1950 (Proc. No. 2914, December 16, 1950, C.F.R., 1950 Suppl. to Title 1, p. 71).

Each statutory provision ("item") listed in the List of Statutes is preceded by a number. This number is referred to in this memorandum and in the Report Forms as the Item Number. The Item Numbers correspond to those used in three previous Senate documents concerning statutes affected by war, emergency, or hostilities (Part 2 of Senate Report 339, 80th Congress, First Session; Senate Doc. No. 42, 80th Congress, First Session; Senate Doc. No. 5, 80th Congress, First Session). Items in the List of Statutes which were not included in these earlier documents have been given new Item Numbers distinguished by a letter following the figure.

The List of Statutes has been based upon the replies of agencies to this office's inquiry of October 4, 1950 and the Senate documents above mentioned, which were in turn based upon Library of Congress indexing procedures and extensive studies by the Department of Justice. The Bureau of the Budget has not made an independent search.

5. DRAFT LETTER TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES. This preliminary draft, which does not commit this office, shows the general manner in which a bill serving the needs of all agencies might be transmitted to Congress. Perhaps transmittal should be by the Department of Defense since

it will be concerned with the largest number of provisions. The letter has been drafted on the tentative basis, as to which views are requested below, that there will be only one bill. Comments on the letter itself will also be welcomed as stated below.

6. REPORT FORMS AND THE FORM OF THIS INQUIRY. The report forms enclosed herewith are of two kinds - a Cover Sheet and a Recommendation Sheet. Your reply to this inquiry is to be made wholly on these forms. (In addition, notifications are to be given by telephone in the cases dealt with in paragraph 8 B below). Detailed instructions on the use of these forms are set out in paragraphs 8 to 10 below.

These forms and the List of Statutes and the related instructions have been prepared with a view to the convenience of agencies, as well as the needs of this office. They are designed to insure that the basic information concerning each statutory provision is furnished to this office by the agency apparently most concerned with it and at the same time to avoid useless duplication of work by other agencies. The length of the instructions and the consideration which they give to the varying circumstances in which agencies may stand in relation to a particular item are due to this effort to reduce the work which will fall upon agencies in making their replies. At the same time this office believes that the presentation of replies by agencies in the manner requested will make it possible for this office to deal with them as expeditiously as will be necessary for drafting a bill before Congress returns.

7. ASSUMPTIONS. The List of Statutes has been compiled and the legislation will be framed on the following assumptions, which have been adopted to avoid any possible doubts as to the continuation of necessary powers, and agencies' replies should be based on these assumptions:

The termination of the state of war with Japan will terminate the state of emergency proclaimed on September 8, 1939, and the state of emergency proclaimed on May 27, 1941, and will create a state of peace and will be the legal equivalent of a proclamation of peace.

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Authority dependent upon the existence of "hostilities" of "threat of war" or "imminence of war" or similarly phrased conditions is not now exercisable, notwithstanding the military action in Korea, and will not be exercisable upon termination of the state of war.

The assumption that the termination of the state of war will terminate the states of emergency proclaimed in 1939 and 1941 has been made because of the terms in which those emergencies were proclaimed. But the termination of the state of war will not, of course, terminate the state of emergency proclaimed by the President on December 16, 1950.

8. GENERAL INSTRUCTIONS.

A. Provisions to be Reported On. Your agency is requested to make a report (on a Recommendation Sheet) on:

- (1) Each statutory provision in the List of Statutes for which your agency is designated as the Responsible Agency or a Commenting Agency (designations are in the second column of the List of Statutes). Report even though you do not desire extension of authority. Report even though you conclude that the item will not be affected by the termination of the war.
- (2) Each other statutory provision in the List of Statutes which applies to your agency. In case of doubt as to whether an item applies to your agency, report it. Report even though you do not desire extension of authority.
- (3) Any statutory provision conferring or defining any war-dependent authority, not in the List of Statutes, that you know of or discover. In case of doubt as to whether an item is of this sort, report it. Report it whether or not you desire extension of authority. Report it even though it does not apply to your agency at all.

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B. Notification to be Given by Telephone to the Bureau of the Budget.

If there is any authority of yours you do not wish extended and

- (i) you are the Responsible Agency for that provision or
- (ii) the provision is not in the Master List,

please telephone the Bureau of the Budget as promptly as possible and inform it of these items. Please call one of the persons designated in paragraph 11 below. This notification will enable the Bureau of the Budget to determine promptly whether any other agency desires the extension of any of these items and to obtain necessary information in support of any desired extension. These are the only notifications which this memorandum asks to be made by telephone. Your agency is also to report on these items in its written reply, to the limited extent indicated below.

C. Optional Reports on Additional Items. Your agency may report on any other items it desires to report on.

D. Information to be Given by Your Agency on Items for which You Are the Responsible Agency. Your agency is responsible for furnishing the following information for each item for which you are the Responsible Agency:

- (1) A correct citation, in the form specified.
- (2) A digest in form suitable for presentation to Congress in support and explanation of the requested legislation; this is to be done whether or not your agency recommends that the statutory provision be continued, since the explanatory material accompanying the legislative request to Congress will contain all provisions affected by the termination of the state of war and not simply those which Congress will be asked to keep in effect.

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- (3) Your agency's recommendation as to whether the provision should be continued.
- (4) A justification of the recommendation, if you recommend continuation of authority. The justification is to be included in material to be presented to Congress in support of the requested legislation and will be a brief statement of the reasons why continuation of authority is desired. It should be of a practical length suitable for inclusion in explanatory material that may cover as many as a hundred provisions.
- (5) If you do not favor continuation of authority, give your reasons and views in the space provided therefor. If you do favor continuation of authority and have therefore furnished a justification, this space should nevertheless be used to furnish your views to this office to the extent customary in the clearance procedure under Bureau of the Budget Circular A-19 unless you consider that your views are adequately stated in the justification. This space is also the place to state that authority under this item will not be affected by termination of the war, with a brief explanation, if that is your view.
- (6) Give the exact legislative language which you propose for use in continuing the authority, if you desire its continuation. Two possible general clauses for extension of authority are set forth in paragraph 10 below for your consideration in connection with each item. We should like any criticism or changes you may care to suggest with regard to these clauses. Please note that some statutes may require individual treatment--for example, those containing such terms as "enemies" which depend for their meaning on the existence of a state of war.

E. Information to be Given by Your Agency on Items for Which You are a "Commenting Agency". For these items you need give only your recommendation as to whether or not the authority should be continued, and your reasons and views to the extent customary under Circular A-19.

F. Information to be Given by your Agency on any OTHER Item in the List of Statutes Applicable to You: For these items you need give only your recommendation as to whether or not the authority should be continued and your reasons and views to the extent customary under Circular A-19.

G. Information to be Given by Your Agency on any Item Conferring or Defining any War-Dependent Authority, NOT in the List of Statutes, That you Know of or Discover. If you have authority under the item and desire its continuation, give the same information that would be required if you were the Responsible Agency desiring continuation (subparagraph D above). If you do not have authority under the item or do not desire its continuation, you need give only your recommendation as to whether or not the authority should be continued, and your reasons and views to the extent customary under Circular A-19.

H. Completeness of Replies. Replies are to be complete in themselves, even where completeness involves repetition of information or views previously communicated to this Bureau.

I. Supplementing Your Agency's Earlier Views. Care should be taken by your agency in making use of information and views previously given by it to this office, since they will not necessarily be accurate and appropriate for present purposes. In particular, your agency should take account of statutes enacted since your previous reply and of provisions imposing limitations in time of peace, these latter not having been mentioned in our inquiry of October 4, 1950.

J. Earlier Agency Views Shown in the List of Statutes. Views previously given by a number of agencies are shown in the List of Statutes for many items. This information is given as a convenience to each agency quoted and for the information of other agencies. It carries no implication as to whether the answers quoted are accurate and adequate for present purposes.

K. The Draft Letter to the Speaker. Views on the enclosed draft of letter to the Speaker of the House of Representatives will be welcomed where agencies desire to give them. They should be given on the enclosed form of Cover Sheet.

L. One Bill or Several? The Departments of State, Defense, Justice and Commerce are requested to state their views as to whether there should be one omnibus bill, meeting the needs of all agencies, to be presented probably by the Department of Defense, and supported by the other interested agencies, or whether there should be several bills, or whether some other procedure is preferable. Views of other agencies will be welcomed where agencies desire to give them. These views are to be given on the Cover Sheet.

M. Proclamation of Peace? The Departments of State, Defense and Justice are requested to give their views as to whether the President, on proclaiming the coming into force of the treaty of peace with Japan, should specifically declare the existence of a state of peace. Views of other agencies will be welcomed where agencies desire to give them. These views are to be given on the Cover Sheet.

9. INSTRUCTIONS CONCERNING REPORT FORMS GENERALLY.

A. Use Report Forms for Reply. Your reply to this circular is to be made on the forms provided herewith -- the Cover Sheet and the Recommendation Sheet. The reply is to consist of: (a) one Cover Sheet; (b) a separate Recommendation Sheet for each statutory provision reported on. Some agencies may have no statutory provisions to report on. In that case their replies will consist of a Cover Sheet alone.

B. Cover Sheet. This form has two purposes. When filled out it will list the accompanying Recommendation Sheets, for your convenience and that of the Bureau of the Budget. It will contain the views of your agency on general questions presented to it and such further general views as your agency may wish to furnish. It will also contain the signature on behalf of the agency.

C. Number of Copies. Each form is to be transmitted to the Bureau of the Budget in duplicate.

D. Additional Copies of the forms are obtainable from the Bureau of the Budget, Office of Jefferson D. Burrus, Jr., code 189, extension 435.

E. Insufficient Space. If any space in a form is insufficient for your reply, continue on a plain sheet of paper to be attached to the form; include on the sheet the name of your agency and enough other identifying data to permit identification of the sheet in case it is detached from the form.

10. INSTRUCTIONS CONCERNING SPECIFIC LINES IN THE RECOMMENDATION SHEET.

NOTES A and B at the foot of the Recommendation Sheet state which lines are to be answered in each case. The following tabulation gives the same information arranged according to the relation of the agency to the item reported on (Responsible Agency, Commenting Agency, etc.):

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Answer all	Answer lines /	Answer lines
lines	1, 2, 3, 4, 5, 6 and 8	1, 2, 3, 6 and 8

If you are the Responsible
Agency for this item and
desire continuation of
authority:

x x

If you are the Responsible
Agency for this item and
do not desire continuation
of authority:

x
and telephone
telephone

If you are a Commenting
Agency for this item

x

If this item is on the List
of Statutes and applies to
you but you are not the
Responsible Agency or a
Commenting Agency:

x

If this is an item not on the
List of Statutes, conferring
or defining War-Dependent
authority, and you desire
continuation of authority:

x

If this is an item that you know
of or discover not on the List
of Statutes, conferring or
defining war-dependent authority,
and you do not desire continu-
ation of authority:

x and
telephone

The following instructions refer to correspondingly numbered lines
(questions) in the Recommendation Sheet. They contain much substance not
given above in this circular.

Line 2. If the item reported on is in the List of Statutes, insert here
its Item Number as given in the List of Statutes. Otherwise, give here the
U.S. Code citation(s).

Line 3. If the item reported on is in the List of Statutes, that list
designates the Responsible Agency and also the Commenting Agencies, if any, for
this item.

Line 4. See NOTE A. The following form of citation is to be used:
 Popular name, if any; Act of ____, 19 ____, ch. ____, section ____, ____ Stat.
 ____ (if not published in Statutes at Large, give Public Law Number), ____
 U.S.C. _____. If the provision has been amended since its original enactment,
 insert "as amended," before the United States Code citation. If you do not
 insert the words "as amended" in the citation, it will be understood by the
 Bureau of the Budget that the provision cited has never been amended.

Line 5. See NOTE A. The digest should be accurate; should set forth
 in quotation marks the terminal language (i.e., the words making the authority
 dependent on war or emergency or limiting it during peace); and should take
 proper account of amendments since the original enactment and transfers of
 function by reorganization plan or otherwise. It should be detailed enough
 to indicate the nature of the provision but brief enough to be suitable for
 use eventually in a comprehensive document for presentation to Congress deal-
 ing with perhaps a hundred different provisions.

Line 7. The justification should be a brief statement for Congress of
 the reasons why extension of authority is desired, of a practicable length
 suitable for inclusion in explanatory material that may cover one hundred
 provisions.

Line 8. Reasons and views are to be stated to the extent customary in the
 clearance procedure under Budget Circular A-19. The remarks in the last date
 column of the List of Statutes should be noted. This is the place to state
 that the item will not be affected by termination of the war, with any ex-
 planation, if that is your view.

Line 9. If either of the following clauses is satisfactory for the item
 as legislative language for the continuation of authority, you may designate
 the clause by its Clause Number; otherwise, please set forth verbatim the
 language you propose; certain items may require individual treatment because
 of such words as "enemy":

Clause Number 1: "The following laws and parts of laws shall remain in full force and effect until hereafter specifically repealed, suspended, or otherwise terminated by Act of Congress, any other terminal date or provision therein to the contrary notwithstanding, and authority granted by any provision therein for exercise in connection with war or national defense or during either of the emergencies proclaimed by the President on September 8, 1939, or May 27, 1941, may be equally exercised for the national security."

Clause Number 2: "The following laws and parts of laws shall continue to be inoperative until such time as is otherwise specifically provided by Act of Congress, any provisions therein making such laws or parts of laws effective in time of peace to the contrary notwithstanding."

11. TELEPHONE CALLS BY AGENCIES. This office will be glad to answer telephone inquiries from agencies concerning this circular and the replies to be made. Such inquiries, and all telephone notifications called for by paragraph 8B above, should be directed to Jefferson D. Burrus, Jr., or Franklin S. Pollak, code 189, extension 435.